Civil Writ Petition No.7029-CAT of 2006.

IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT CHANDIGARH

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Date of Decision: December 17, 2007

The Administrative Commandant, Station Head Quarter, Ferozepur Cantt and others ... Petitioners

VERSUS

Pawan Kumar and others ... Respondents

CORAM : **HON'BLE MR.JUSTICE HEMANT GUPTA.**
HON'BLE MR. JUSTICE MOHINDER PAL.

1. Whether Reporters of Local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. Namit Kumar, Advocate,
for the petitioners.

Mr. Shiv Kumar, Advocate,
for respondents Nos. 1 to 4.

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MOHINDER PAL, J.

The short question raised in this petition filed under Articles 226/227 of the Constitution of India is - whether the quota reserved for Other Backward Classes (OBC) in Government service can be de-reserved/utilized for appointment of the candidates belonging to other reserved categories.

The facts, in brief, are that respondents Nos. 1 to 4

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were appointed as Sweepers under Scheduled Caste Category in response to advertisement issued in January, 2002 for 60 posts. The petitioner-department had initially appointed 44 persons including respondents Nos. 1 to 4. Some persons who had grievance of not being selected, filed Original Application No.1174-PB of 2002 and the same was allowed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as `the Tribunal) vide order dated January 19, 2004 by holding that the select list prepared for the posts of Sweepers was illegal and contrary to law and the petitioners were directed to prepare the list again. The petitioners challenged the order dated January 19, 2004 before this Court by way of filing a Civil Writ Petition, which was dismissed on January 06, 2005 upholding the order of the Tribunal dated January 19, 2004. Thereafter, the petitioner-department implemented the said order of the Tribunal by issuing the list of selected candidates in order of merit. In this process, services of 11 persons who had earlier been selected, were to be terminated in order of merit and respondents Nos. 1 to 4 did not find any place in the re-caste select list prepared by the department because of their lower merit. Vide order dated March 14, 2005, the department issued them notice of termination. Respondents Nos.1 to 4 challenged this order dated March 14, 2005, before the Tribunal by way of filing Original Application No.380/PB/2005, notice of which was issued to the petitioners. They filed a short written statement alleging that respondents Nos. 1 to 4 were not entitled for any relief due

to the fact that the fresh re-caste select list had been prepared by the department on the basis of orders dated January 19, 2004, passed by the Tribunal. It was further stated in the reply that respondents Nos. 1 to 4 did not find place in the re-caste select list because of their lower merit. The Tribunal, vide order dated July 29, 2005 (Annexure P-3) directed the petitioner-department to consider the names of respondents Nos. 1 to 4 against the posts meant for OBCs as the quota of OBCs could be carried forward and considered in the next selection and more candidates of that category were available. The department filed Review Application No.49 of 2005 in Original Application No.380/PB/2005 for reviewing/recalling of the order darted July 29, 2005 (Annexure P-3), which was also dismissed by the Tribunal vide order dated March 16, 2006 (Annexure P-5). The petitioners have now challenged these orders (Annexures P-3 and P-5) in this petition.

We have heard the learned counsel for the parties and have gone through the records of the case.

The instructions issued by the Government of India, Department of Personnel and Training, O.M. No.36012/17/2002-Estt. (Res.) dated November 06, 2003 (copy Annexure P-4), completely deal with the issue involved and are as under:-

> " **Exchange of reservation between Scheduled Castes and Scheduled Tribes not allowed.**
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> 1. The undersigned is directed to say that after introduction of post-based reservation,

various Ministries/Departments have been seeking clarification whether it is possible to fill up a post reserved for Scheduled Tribes by a Scheduled Caste candidate or vice versa by applying the principle of exchange of reservation between Scheduled Castes and Scheduled Tribes as was possible when vacancy based rosters were in vogue.

2. Basic principle of post-based reservation is that, the number of posts filled by reservation by any category in a cadre should be equal to the quota prescribed for that category. If exchange of reservation between Scheduled Castes and Scheduled Tribes is permitted, number of employees of one reserved category of employees appointed by reservation will get beyond reservation prescribed for that category. It would be against the spirit of post-based reservation. Therefore, after introduction of post-based reservation, it is not permissible to fill up a post reserved for Scheduled Tribe by a Scheduled Caste candidate or vice versa by exchange of reservation between Scheduled Castes and Scheduled Tribes.

3. If sufficient number of SC/ST/OBC candidates fit for appointment against reserved vacancies are not available, procedure as given below

should be followed for filling up such reserved vacancies:-

A. In cases of Direct Recruitment:-

(i) Where sufficient number of candidates belonging to SC/ST/OBC are not available to fill up the vacancies reserved for them in direct recruitment, the vacancies shall not be filled by candidates not belonging to these communities. In other words, there is a ban on de-reservation of vacancies for Scheduled Castes, Scheduled Tribes and OBCs in direct recruitment.

(ii) If sufficient number of suitable Scheduled Castes/Scheduled Tribes/OBC candidates are not available to fill up vacancies reserved for them in the first attempt of recruitment, a second attempt shall be made for recruiting suitable candidates belonging to the concerned category in the same recruitment year or as early as possible before the next recruitment to fill up these vacancies. If the required number of Scheduled Castes, Scheduled Tribes and OBCs candidates are not even then available, the vacancies which could not be filled up shall remain unfilled until the next recruitment year. These vacancies will be treated as backlog vacancies.

(iii) In the subsequent recruitment year when

recruitment is made for the vacancies of that year (called the current vacancies), the backlog vacancies of Scheduled Castes, Scheduled Tribes and OBCs will also be announced for recruitment. While doing so, it may be kept in view that the vacancies of the particular recruitment year i.e the current vacancies and the backlog vacancies of OBCs will be treated as one group and back vacancies of Scheduled Castes and Scheduled Tribes as a separate and distinct group. Thus, there will be two distinct groups of vacancies. One group will contain the current vacancies and the backlog vacancies of OBCs and the another group will contain backlog vacancies of Scheduled Castes and Scheduled Tribes. While in respect of vacancies in the first group, instructions that not more than 50 % of the vacancies can be reserved in a year will apply, all the backlog vacancies reserved for Scheduled Castes and Scheduled Tribes will be filled up by the candidates belonging to concerned category without any restriction whatsoever as they belong to distinct group of backlog vacancies of Scheduled Castes and Scheduled Tribes.

(iv) If vacancies reserved for Scheduled

> Castes/Scheduled Tribes/OBCs cannot be filled up and are carried forward as backlog vacancies and remained unfilled in the following recruitment year also, they will be carried forward as backlog vacancies for subsequent recruitment year (s) as long as these are not filled by candidates of the category for which these are reserved. "

In view of the above-quoted clear-cut instructions, the orders of the Tribunal Annexures P-3 and P-5 cannot be upheld and have to be quashed. These instructions were brought to the notice of the Tribunal by the petitioners, but were ignored by it. These instructions clearly state that vacancies meant for Scheduled Castes, Scheduled Tribes and OBCs cannot be filled by candidates not belonging to these communities. In other words, there is ban on de-reservation of vacancies meant for these categories. After introduction of post-based reservation, it is not permissible to fill up a post reserved for OBC candidate by a Scheduled Caste or Schedule Tribe candidate. If vacancies reserved for Scheduled Castes/ Scheduled Tribes/OBCs could not be filled up and were carried forward as backlog vacancies and remained unfilled in the following recruitment year also, they were to be carried forward as backlog vacancies for subsequent recruitment year (s) as long as they were not filled by candidates of the for which these were reserved. The Tribunal ought to have followed these instructions while passing the impugned orders. The Tribunal did not appreciate that the quota of OBC category

cannot be de-reserved/utilized by the candidates belonging to other categories as per instructions (Annexure P-4). Thus, we have no hesitation to quash the order of the Tribunal whereby it was held that the case of respondents Nos. 1 to 4, who belong to Scheduled Caste category, should be considered by the department against the vacancies meant for the category of OBCs. The order of the Tribunal is in complete disregard of instructions (Annexure P-4).

In view of the above, this writ petition is allowed and the orders dated July 29, 2005 (Annexure P-3) May 16, 2006 (Annexure P-5) passed by the Tribunal are quashed.

(HEMANT GUPTA)
JUDGE

(MOHINDER PAL)
JUDGE

December 17, 2007.
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